

January 7, 2011

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc.*, MB Docket No. 10-56

Dear Ms. Dortch:

This is to inform you that, on January 6, 2011, Stacy Fuller of DIRECTV had a telephone conversation with Rick Kaplan, Chief Counsel and Senior Legal Advisor to Chairman Genachowski, to discuss the above reference proceeding. With respect to arbitration, Ms. Fuller stressed that proceedings should continue to involve only a stand-alone agreement with a single programming network, as has been the approach used by the Commission in all previous arbitration conditions. Requiring arbitration of multiple, bundled networks would significantly increase the complexity and cost of an arbitration proceeding, and thus would undermine any efforts to streamline the process to make it a more affordable and expedited remedy for all concerned. Moreover, it is hard to imagine how an arbitrator would go about determining which party's proposed terms and conditions for carriage best represented the fair market value of up to 15 Comcast/NBCU networks at a single time – even assuming that both parties submitted offers on the same bundle.

In addition, if it were to adopt such a regime, the Commission would effectively institutionalize the very sorts of program tying practices that have raised concerns in other proceedings. For example, in the first order imposing an arbitration condition, the Commission recognized that requiring the programmer to submit arbitration carriage proposals on an unbundled basis would prevent the RSN operator from crowding out independent programming. As the Commission explained,

to obtain RSN or local broadcast station programming from News Corp., an MVPD may accede to News Corp.'s demands to carry its affiliated cable networks, or to pay supracompetitive rates for News Corp. programming. Absent these increased costs, the MVPD might have elected to carry a new niche network that would have expanded the types of programming available to its subscribers. We find, however, that by constraining News Corp.'s ability to threaten to foreclose programming and thereby raise prices, *and by requiring Applicants to*

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submit bids to the arbitrator for RSN and broadcast station programming on an unbundled basis, the conditions we impose herein will protect against the potential harms to program diversity posed by this transaction.¹

Indeed, “[g]iven the problems associated with such tying arrangements,” the Commission is currently considering “whether it may be appropriate for the Commission to preclude them.”² Having recognized the seriousness of these concerns and the benefits of program diversity, the Commission should not in this proceeding establish a regime that undercuts its actions in other proceedings.³

Should you have any questions about this submission, please do not hesitate to contact me.

Respectfully submitted,

/s/

William M. Wiltshire
Counsel for DIRECTV

cc: Rick Kaplan

¹ *General Motors Corp., Hughes Electronics Corp., and The News Corporation Ltd.*, 19 FCC Rcd. 473, ¶ 261 (2004) (emphasis added). As the Commission has acknowledged, national programming can be used just like “must have” RSN programming because “a competitive MVPD’s lack of access to popular non-RSN networks would not have a materially different impact on the MVPD’s subscribership than would lack of access to an RSN.” *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Sunset of Exclusive Contract Prohibition*, 22 FCC Rcd. 17791, ¶ 39 (2007), *aff’d sub nom. Cablevision Systems Corp. v. FCC*, 597 F.3d 1306 (D.C. Cir. 2010).

² *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements*, 22 FCC Rcd. 17791, ¶ 120 (2007).

³ Nothing would prevent Comcast/NBCU from negotiating a bundled deal with an MVPD, and parties would be free to engage in arbitration over multiple networks if they mutually agree that such an approach is beneficial in a particular case. However, for the reasons discussed above, the Commission should not mandate that approach for the overall arbitration regime.